
IS IT ALWAYS HIM OR CAN IT ALSO BE HER?: A STUDY ON THE NEED FOR GENDER NEUTRAL LEGAL LANGUAGE IN RAPE LAWS IN INDIA

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ABSTRACT

The world around us is constantly evolving, not only in matters of science and technology but also in matters of crime and victimology. The legal sphere across many dimensions has adapted to various significant changes in the scope and nature of crimes. This paper adopts a doctrinal approach to critically analyse the gap between the binary language already existing and how it shall adapt itself to the oncoming age of gender neutrality. It compares the IPC to the newly implemented BNS and examines the language used for rape laws. Ultimately, we arrived at the conclusion to insert certain amendments to the existing laws across various dimensions. This research hypothesizes that there is not much area for linguistic reform in criminal laws and hence provides a linguistic reform framework. Although primarily focused on the Bharatiya Nyaya Sanhita, this research seeks influence from reformed legal frameworks and international conventions. This research is significant doctrinally as it aims to provide a new venture to the existing body of knowledge, practically, by proposing a new reform in criminal law with respect to rape. It contributes significantly by establishing a foundational framework for future research on criminal law reforms.

Keywords: Bharatiya Nyaya Sanhita, Criminal Law, Rape Laws, Gender Neutrality, International Law, Legal Reforms.

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“For the perpetrator, rape lasts just a matter of minutes. For the victim, it never stops.”

— Fredrik Backman, *Beartown*

Introduction

It is but an obvious fact that crimes have perpetually existed from time immemorial. As many believe, the first crime in history was when Eve bit into the forbidden apple, directly defying the one commandment rule given by the sovereign power. From that moment, the world has plunged into varying degrees of crime, disobedience and indulgence in cruel ways to gain power. However, a dominating perspective that has withstood the test of time is that the human male species have always been the perpetrator of crime. This study aims to shift this narrative to be at par with the transformative socio-legal environment around us today.

One can credit the sociological stereotype for influencing ancient and modern minds till today who still believe that only females are the victims of sexual violence and moreover, rape. The notion of a male victim has always been a hard pill to swallow. A paradox exists for both men and women to adjust and not report any incident of sexual violation if any such thing has happened to them. So if both a male and a female are both victims, who then is the ultimate offender? Can we determine a class of offences to be committed only by one gender? This is the question that this paper also tries to answer and subsequently bridge this gap.

Literature Review

I. Existing body of Law:

The IPC of 1860, lays down the criminalisation of rape and related sexual offences against women in Sections 354, 375, 376 and 377. The language used is as follows:

“A man is said to commit "rape" if he--

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person”²

The very definition of rape relies on the man entirely. It begins with the very words, “ ‘man’ is said to commit rape...”. This shows a clear attempt to perpetuate the stereotype that only a man can commit a rape.

Even with the reformed criminal law set in place, the Bharatiya Nyaya Sanhita has not deviated from the definition of rape from its predecessor and still keeps the patriarchal assumptions and makes the crime of rape gender-specific.³ It is notable that the majority of the provisions were still carried over from IPC and in other terms, there has not been a significant change in the terminologies and the expansion of scope of crime and punishment even with the enactment of the new criminal code.

II. Theoretical Frameworks

a) Martha Nussbaum’s Bodily Autonomy Framework

Martha Nussbaum opines in her work that there is a developing need for a more human rights approach to such acts of rape and acts against the human dignity rather than subjectifying it to a particular gender only. She advocates for a method known as the “Capabilities Approach” where one is examined based on ten central human capabilities namely, life, bodily health, bodily integrity, senses, imagination and thought, emotions, practical reasons which include being able to form a conception of the good and to engage in critical reflection about the planning of one's life; affiliation, being able to live in consideration for animals and plants and finally, control over one’s political and material environment.⁴

² Indian Penal Code 1860, s 375

³ *Bharatiya Nyaya Sanhita 2023*, ch V, s 63, 23

https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf accessed 3 May 2026.

⁴ Martha C Nussbaum, ‘Human Rights and Human Capabilities’ (2007) 20 *Harvard Human Rights Journal* 21.

Drawing from her inputs, we arrive at a critical intersection for a deviation from the norms of gender stereotyping rape to only the female perspective. It is of due importance that legal and legislative systems worldwide grow to adapt a more human rights approach rather than a gendered approach while deliberating and legislating on these subjects.

b) Scandinavian Theory of Realism

Anders Vilhelm Lundstedt proposed the logic of legal theory in Scandinavian realism that law at any given point in time, must reflect the tenets of social welfare.⁵ And such social welfare must be set free from set values of society. The set values here being that rape can only be done by a man to another woman and that rape occurs only to a woman. Lundstedt also opined that one should deviate from the abstract notion of inherent rights. This is considered as his indirect criticism against gender stereotypes which have been birthed out of traditional systems rather than out of social utility. Hence we can imagine that if gender neutral laws promote equality, efficiency, and social well-being, Lundstedt would likely support them on those grounds.

The works of Alf Ross, another renowned scholar on this subject matter, showcase an evident support of rational and evidence-based law-making. Evidence here therefore remains to be that, with the oncoming age, rape and sexual acts are not anymore limited to men alone. Alf Ross' framework, when read along with the central argument of this paper, would back the notion of gender neutral laws replacing gender specific laws when empirical findings display equality, fairness and promote legal administration.⁶

c) Feminist Legal Theory Beyond Neutrality by Nicola Lacey

Nicola Lacey argues that the ideal of legal neutrality may obscure underlying gender biases embedded within legal institutions. Consequently, gender-neutral legislation should be evaluated not only by its formal equality but also by its

⁵ Anders Vilhelm Lundstedt, *Legal Thinking Revised: My Views on Law* (Almqvist & Wiksell 1956).

⁶ Alf Ross, *On Law and Justice* (University of California Press 1959).

capacity to achieve substantive equality between genders.⁷

III. International Reports

In accordance with the central view of the study, female perpetrated sexual violence remains a highly underreported crime and it is yet to be deeply explored. A reason for such underreporting is because of the largely accepted mindset that females are too passive for such crimes or men have always committed these crimes. One such study emphasises the act of underreporting due to preexisting stigma of sexual violence and its discussion. The study also challenges that females do not only act as accomplices to male perpetrators but are also the sole perpetrators as well as in themselves. The authors critically analyse sexual crimes after setting it apart from the dominant male lens. Their findings reveal the need to rework the evidentiary benchmark conventionally used and also highlight the ever-growing need to introduce gender-neutral laws, especially when certain crimes are socially accepted to be committed by men. In jurisdictions where sexual offences are implicitly conceptualised through a male lens, such findings expose a critical gap between empirical reality and legal interpretation.⁸

Although statistical data consistently indicate that men constitute the majority of perpetrators and women the majority of victims, emerging scholarship highlights the presence of female offending and male victimisation as under-recognised phenomena. The underreporting of such cases, coupled with restrictive legal definitions in certain jurisdictions, distorts the empirical landscape of sexual violence. This evidentiary gap has significant doctrinal implications, as it reinforces gendered assumptions within criminal law and may hinder the development of inclusive legal frameworks capable of addressing all forms of sexual victimisation.⁹

IV. International Legal Framework

1. Universal Declaration of Human Rights (UDHR)

The UDHR articles 2, 7 and 23¹⁰ encapsulates the non discrimination of gender in crimes against the body either physical or sexual or both, and guarantees equal legal

⁷ Nicola Lacey, 'Feminist Legal Theory beyond Neutrality' (1995) 48(2) *Current Legal Problems* 1.

⁸ MDS Wijkman, 'Multiple Perpetrator Rape Committed by Female Offenders' (2020) *Journal of Sexual Aggression* <https://pmc.ncbi.nlm.nih.gov/articles/PMC7924104/> accessed 5 May 2026.

⁹ 'Rape by Gender' (Wikipedia, 2026) https://en.wikipedia.org/wiki/Rape_by_gender accessed 5 May 2026.

¹⁰ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) arts 2, 7 and 23

protection of all regardless of race, ethnicity, sex, gender, and territorial affiliation. This document lays down a wide scope for the crimes and its punishments available to perpetrators worldwide leaving no stone unturned. The adoption of gender-neutral language is key to ensuring that all communities are equally protected and recognised globally, taking an effort to steer away from the assumed patriarchy existing around the world.

2. Penal Code of Bhutan

The sections related to rape, have a clear gender neutral language adopted by the Penal Code, using the word “defendant”, not limiting the offense to be committed by a particular gender only¹¹. This shows a very progressive vision of making sure that each section of society are able to report and be held accountable ensuring the maximum reach of justice in especially sensitive and personal crimes like rape irrespective of the perpetrator and the victim. There is also a significant shift in the definition of rape used by the Indian jurisprudence and here, rape is defined as when the defendant has sexual intercourse with another person and relies heavily on the consent given under duress or withheld by the other person.

3. Crimes Act 1961 of New Zealand

The sections 127 to 130 of the Crimes Act with relation to sexual violation display a large inclusion of genders or persons capable of sexual offenses and steer away from the long accepted social norm of the gender of perpetrators.¹² Although these sections were repealed by the Crimes Amendment Act, 2005, the definition of sexual violence relies a bit on the effect of the act of contact of a person’s penis and another’s genitalia without consent or consent given under duress. However, a large portion of this law remains to be gender neutral and does not use the conventional terminologies of male and female.¹³

¹¹Government of Bhutan, *Penal Code of Bhutan 2004*, ch 14, s 177(c), 26 <https://www.warnathgroup.com/wp-content/uploads/2015/03/Bhutan-Penal-Code.pdf> accessed 5 May 2026

¹² Crimes Act 1961 (New Zealand), ss 127–138 <https://www.legislation.govt.nz/act/public/1961/43/en/latest/> accessed 5 May 2026.

¹³ Crimes Amendment Act 2005 (New Zealand), s 7 <https://www.legislation.govt.nz/act/public/2005/41/en/latest/> accessed 5 May 2026.

4. Anti-Rape Law of 1997 of Philippines

The Anti-Rape Law of 1997 in the Philippines represents a significant shift towards partially gender-neutral legal language. The statute expands the definition of rape to include acts committed by “any person” through the insertion of objects or penetration of non-vaginal orifices.¹⁴ This formulation also enables the legal recognition of male victims and female perpetrators. However, the law retains a dual structure, as rape through carnal knowledge continues to be framed in explicitly gendered terms (“by a man... against a woman”), thereby limiting full neutrality.¹⁵

5. United States Title 18 of the US Code (2013)

The United States federal framework adopts a gender-neutral approach to sexual offences by defining sexual abuse primarily through the absence of consent, coercion, force, or incapacity. Under 18 U.S.C. §§ 2241–2242, the statutory language employs neutral terminology such as “whoever” and “another person,” thereby extending legal protection irrespective of sex or gender identity.¹⁶ The federal model recognises a broader spectrum of sexual victimisation, including offences involving coercion, incapacity, and child abuse. Nevertheless, despite this progressive statutory language, critics argue that practical enforcement and social perceptions continue to reflect gendered assumptions regarding victimhood and perpetration, demonstrating that doctrinal neutrality does not necessarily guarantee substantive equality.

6. United Nations Security Council Resolution 2106 (2013)

The resolution resolves itself to recognise, note and affirm various political, civil, economic and human rights which are outrightly guaranteed to all genders. It also mentions and concurs that even men and boys, apart from the majority of women and girls, are also considered victims of sexual crimes either directly or indirectly, by being made as witnesses of sexual abuse under force and threat¹⁷. Although only affirmation, recognition and concurrence is not enough to curb sexual crimes, it certainly has paved

¹⁴Anti-Rape Law of 1997, Republic Act No 8353 (Philippines)’ (Asian Development Bank) <https://lpr.adb.org/resource/anti-rape-law-1997-republic-act-no-8353-philippines> accessed 5 May 2026.

¹⁵ Ibid, art 266-A(1)

¹⁶ 18 USC §§ 2241–2242

¹⁷UN Security Council, *Resolution 2106 (2013)*, UN Doc S/RES/2106 (24 June 2013) para 6.

the way for the first steps to be taken to spread awareness that sexual crimes around the world are definitely not gender-specific anymore.

7. The Yogyakarta Principles

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity. It was propounded by a group of distinguished human rights experts. The principles concur on a universal understanding that there needs to be a comprehensive regime that coincides with international human rights laws and sexual orientation. The principles also include a wider definition of sexual orientation and strive to bring awareness of gender equality, making the core argument of their idea.¹⁸ The introductory preface puts forth that, human rights violations targeted toward persons because of their actual or perceived sexual orientation or gender identity constitute a global and entrenched pattern of serious concern. They include extra-judicial killings, torture and ill-treatment, sexual assault and rape, invasions of privacy, arbitrary detention, denial of employment and education opportunities, and serious discrimination in relation to the enjoyment of other human rights. These violations are often compounded by experiences of other forms of violence, hatred, discrimination and exclusion, such as those based on race, age, religion, disability, or economic, social or other status.¹⁹ The Yogyakarta Principles remain a formidable document in that it addresses and recognises all gender and sexual orientation communities, and combines it with the need for a more expansive international human rights legal framework, making it futuristic in nature for the coming generations.

The Way Ahead: Linguistic Reform Amendment

Having examined the exclusionary implications of the existing framework, this paper proposes a linguistic amendment to the Bharatiya Nyaya Sanhita, 2023, aimed at introducing gender-inclusive terminology within sexual offence provisions. The existing statutes relating to the definition of rape under Section 63 continues to retain the gender-specific nature of the perpetrators to be only men and the victims to only be women. Therefore, there lies a need to

¹⁸International Commission of Jurists and International Service for Human Rights, *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity* (March 2007) 6.

¹⁹Ibid.

adopt more inclusive legal language that extends equal legal protection and accountability to all sexual orientations and genders, and provides a safeguard to men, women, transgenders and non-binary persons. Coincidentally, this paper proposes to reform the existing language consisting of gender-exclusive terminologies like “man” and “woman” and shift into using gender-inclusive terms like “person”, “individual” and other synonymous terms. However it is obvious and required that the aggravated punishments remain for the perpetrators of these heinous crimes. This would make the BNS a transformed and collaborative as well as a compliant criminal legal framework, such as the Yogyakarta Principles, the Anti-Rape Laws of Philippines, and the mother of them all, the UDHR and ICCPR, while also drawing influence from the Penal Code of Bhutan. Such examined international frameworks draw focus on major elements of sexual crimes like consent, age, or coercion rather than drawing a defined border on the gender of the criminal and the victim.

The implication of such linguistic reform would be the first step in ensuring that India continues to be a truly accommodating nation that works harmoniously with equality and legal protection. It would also pave the way for a more comprehensive recognition of the various victims of sexual harm irrespective of their gender or sexual orientation while preserving enhanced safeguards for historically vulnerable groups through separate sentencing or aggravated offence provisions. Linguistic reform within criminal statutes is not merely semantic; it determines the boundaries of legal recognition, victimhood, and access to justice.

For example a change in the definition of rape in BNS Section 63 shall be as follows:

‘A man is said to commit “rape”’. This shall be rephrased to “A person is said to commit rape when the person indulges in a sexual activity without the consent of the other person...” and so forth.

However, the commutation and execution of the punishment shall be retained as per the existing criminal law requirements to maintain integrity, or as per Articles 14 and 15 of the Indian Constitution.

Conclusion

Hence this paper concludes with the words of Charlotte Issakson, “If we can travel to the moon and back—then of course we can end sexual violence.” The acts of sexual violence is

the reality of the generations before, now and after us. This reality, although hard to understand, can be curbed by a voluntary and widespread effort to speak up on our experiences and share them with each other. As Aristotle said before, man (or in this case, a woman or a person) cannot live in isolation and is a social and political animal. It is in these shared experiences that the world can learn from mistakes and work together in making this world a better place for all of us irrespective of our gender, sex, status, and place of birth. All these are ignited by first changing the primitive mindsets and stereotypes that have existed since the beginning of time in society on sensitive issues like rape, sexual abuse and domestic violence as well. It is on this premise that this paper tries to put forth a vision of a new Bharath, and a new system of criminal laws and ultimately a new Bharatiya Nyaya Sanhita to make sure it serves what it was meant to serve, Nyaya (justice).

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